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No. 149] NEW DELHI, WEDNESDAY, JULY 7, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 29th June 1954

S.R.O. 2228.—Whereas the election of Shri Jagat Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Bari Sadri Kapasan constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bena son of Moda, Jat, resident of Kapasan, District Chittor;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 36 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT KOTAH

CORAM:—Shri P. D. Pande—*Chairman.*

Shri J. P. Mathur—*Judicial Member.*

Shri Bishan S. Darbari—*Advocate Member.*

ELECTION PETITION NO. 313 OF 1952

Shri Bena, son of Moda, Caste Jat, resident of Kapasam, District Chittor, Rajasthan.—*Petitioner.*

Versus

1. Shri Jagat Singh son of Chatarsinghji, Chatur Niwas, Udaipur City.
2. Shri Bhawani Shankar son of Birdhichand Nanwana of Kapasan, District Chittor.
3. Shri Bhanwarlal Jhanwar of Kapasan.
4. Chhaganlal Chandalia of Kapasan.
5. Shri Hari Ballabh son of Mithoolal of Kapasan—*Opposite Parties, or Respondents.*

COUNSEL—Shri Nathulal Jain, Advocate and Shri Panachand Jain Pleader for the Petitioner, and,

Shri U. M. Trivedi, Barrister-at-law, and Pt. Ram Swaroop Sharma, Advocate for Respondent No. 1.

JUDGMENT.

Shri Bena has filed this election petition with a specific prayer that the election of Shri Jagat Singh Jhala (Opposite Party No. 1) to the Rajasthan State Legislative Assembly from Bari-Sadri-Kapasan Constituency be declared to be wholly void and set aside.

Although, the petition has not mentioned this as a fact, it has subsequently transpired that the above Constituency was a double-member Constituency and that one Jaichand Regar was also elected as a Scheduled Caste member for the reserved seat along with O.P. No. 1, who was returned for the general seat.

The only allegations, which the Petitioner has made in regard to the election are that he and the opposite parties were candidates to the Rajasthan Legislative Assembly from the above named constituency in the general elections of 1951-52, that opposite parties Nos. 4 and 5 withdrew from the contest, that the nomination paper of the petitioner was improperly rejected on the ground that he was a village Patel, and as such, held an office of profit under the Government of Rajasthan, although, the Petitioner was not a village Patel, but was working without receiving any remuneration, as a guardian for the minor Patel, named Ganesh, and that from among the rest of the opposite parties (that is, Nos. 1 to 3) O.P. No. 1 was elected, although, he was guilty of certain illegal and corrupt practices as detailed in Schedule A.

The petitioner has thus called in question the election of O.P. No. 1 on the following two grounds:—

(a) The rejection of the Petitioner's nomination paper is improper and has materially affected the results (result?) of the elections (election?) and

(b) O.P. No. 1 resorted to corrupt and illegal practices of bribery, undue-influence, procuring assistance of public servants and procuring conveyances for voters, and so also, the result of elections has been materially affected.

In order to amplify his ground No. (b) the petitioner has given in his Schedule A the following clumsily drafted particulars of the illegal and corrupt practices alleged to have been committed by C.P. No. 1:—

1. He, "his agents and canvassers with his connivance employed the village headmen of almost of all villages to canvass and make propaganda in his favour and they were paid money and given drinks everyday."

2. His "agents with his connivance treated the voters in all villages for procuring their votes in favour of the opposite party No. 1."

3. His "agent with his knowledge employed the Pujari of Marmi 'Mataji' to show to the people that he was possessed with the spirit of Goddess and ask people to vote for 'Dcepak' which was the symbol of the opposite party No. 1 and then only their religion will be protected. The same thing was done by the pujari in a large gathering and people were made to believe that really Goddess was speaking through the Pujari."

4. He "employed more people than authorised for propaganda and canvassing and paid remuneration to them."

5. He, "his agents and canvassers, who were mostly Jagirdars specially Jagirdars of Pahuna, Manyas, Bansi, Boheda, Sadri and others, terrorised voters and asked them to vote for opposite party No. 1, otherwise dacoities will be committed and they will be killed. Reign of terror prevailed in the area and the police was not able to maintain order on the polling stations."

6. He "employed Bhopas, priests and Patels of almost every village to carry on vicious propaganda against the Congress party and in favour of Jan Sangh. They influenced the people in the name of religion, by making out false speeches that Congress was slaughtering cows and religion will be in danger, brothers and sisters will be married etc., if Congress wins."

7. He, "his agents and canvassers always went armed, took advantage of the law and order situation and openly declared that the lives and property of the people were in their hands and dacoities will stop only when they vote for Jan Sangh. Thakur of Manaya's speech is worth mentioning."

8. "The Rajput supporters of Congress party were threatened of ex-communication, some threatened and others were beaten. Nahar Singh of Bohenda was expelled from caste and badly injured by the agents and supporters of opposite party No. 1. Moda Telhi and Sajja Singh of Bohenda were also beaten during the election period for lending support to Congress."

9. "The Muslim voters of village of Boheda and other villages were told by opposite party's agent and canvassers with his connivance that they will be protected by the Rajputs if they favoured and voted for Jan Sangh otherwise they will be sent to Pakistan."

10. He, "his agents and canvassers procured conveyance for the voters and voters of village Marali were brought to Upreda polling centre in truck."

11. "Shobha Lal Jain of Bhadsoda, a Congress worker was threatened to be shot dead by Thakur of Kakaria Khedi canvasser of opposite party No. 1."

12. He "procured the assistance of Tehsildar of Bari Sadri for furtherance of his election. The said Tehsildar openly canvassed in favour of opposite party No. 1 and used to drink and eat with the agents and canvassers of opposite party No. 1; on polling days bottles of wine were brought from Jilwar Thakur which were caught."

13. He "procured the assistance of Prithiva Singh Shahna who was a polling officer, he openly canvassed for opposite party No. 1. Then he was on duty on the polling station showing how to put in ballots; he openly told voters at Rashmi Polling station that they would vote for opposite party No. 1."

Out of the 5 opposite parties none but No. 1 has contested the petition. He filed his first written statement on 2nd December 1952 and asserted that Ganesh was not a minor and that the Petitioner was a Patel and held an office of profit, and so, his nomination paper was properly rejected without the result of the election having been affected in any way. According to him, the Petitioner's nomination paper was also otherwise invalid, inasmuch as, the seconder in his Nomination paper and that of Respondent No. 6 Hari Ballabh was the same, and the said petitioner had signed the Nomination paper before the proposer or seconder. He also refuted the petitioner's allegations that he had resorted to corrupt or illegal practices of bribery, undue influence, procuring assistance of public servants and procuring conveyance for voters.

As regards the various allegations made by the Petitioner in Schedule A of his petition, and also reproduced above in this judgment, O.P. No. 1 pleaded that allegations Nos. 1 and 4 were too vague and allegation No. 13 was false. He also completely denied the rest of the allegations and offered some explanations or counter-allegations which will be discussed at length, if necessary, while disposing of issues 2 and 3.

On the basis of the above written statement, four issues were framed on 9th December 1952 and out of them issue No. 1 was amended on 12th March 1953. But, on 22nd January 1953 O.P. No. 1 had already filed an application for amendment of his written statement by seeking to add to it a further objection that petitioner's omission to join all necessary parties was fatal to the petition. In that application, his main point was that the constituency of which the election was sought to be set aside was a double-member constituency, and so Jaichand Regar, who was a Scheduled caste candidate, was a necessary party along with Prabhu Chamar, whose application (nomination) was rejected. His application was rejected by the Tribunal on 11th February 1953 and petitioner's evidence was recorded on 13th March 1953 and 14th March 1953. Subsequently, on 18th December 1953, on a writ-application as filed by O.P. No. 1 before the High Court of Rajasthan against the Tribunal's order rejecting his application for amendment of written statement, the Hon'ble Court gave a direction to the Tribunal to allow Shri Jagat Singh (O.P. No. 1) to raise the plea that the election petition is not maintainable owing to the non-joinder of Jai Chand Regar, who was a successful candidate from the reserved Bari-Sadri-Kapasani Constituency.

In keeping with the above direction, an additional issue on the question of alleged non-joinder was framed on 15th February 1954 and on 27th February 1954 that issue and the original issue No. 4 were renumbered. Thus, the issues now for disposal run as follows:—

1. (a) Did petitioner not hold any office of profit under the Government of Rajasthan at the time of his nomination and was his Nomination Paper rejected improperly?

- (b) In case of improper rejection of the nomination paper, has the result of the election been materially affected?
2. Did Opposite Party No. 1 resort to all or any of the corrupt and illegal practices as alleged in paras. 2, 3, and 5 to 13 of Schedule "A" of the petition and if so, with what effect?
 3. Are the allegations in paras. 1 and 4 of Schedule 'A' of election petition too vague and wide and should the petitioner be called upon to supply better particulars in terms of Section 83(2) of the Representation of Peoples Act of 1951?
 4. Is the election petition not maintainable owing to the non-joinder of Jai Chand Regar, who was admittedly the successful candidate from the Reserved seat of Bari-Sadri Kapasan Constituency?
 5. Is the petitioner entitled to the reliefs claimed by him?

Findings

Issue 1(a).—The negative form of this issue is due to the following positive but loosely-worded order of the Returning Officer, as appearing on the Petitioner's Nomination Paper, Ex. I:—

"As the candidate holds an office of profit and gets remuneration appears from the certificate, which he and the objector have produced, the nomination is rejected under Art. 191 of the Constitution of India."

But, the evidence on the record both oral and documentary does not seem to support the above order except to the extent that as a Shikmi Lumberdar, the Petitioner could be said to be holding an office. The history of his appointment as a Shikmi Lumberdar narrated briefly is that the Petitioner and Bhag Chand were brothers. Ex. A4, as produced by Respondent No. 1 himself indicates that at first the Petitioner was recorded as Lumberdar in S. 1985 in place of Bhag Chand, and subsequently, as shown by Ex. II, he was entered as a Shikmi Lumberdar for Bhag Chand's minor son, Ganesh, on 15th September 1936. The statements on oath of P.Ws. 1 to 4 make it clear that the above entry was made in favour of the Petitioner, as guardian for Ganesh, on account of latter's minority. P.Ws. 2 and 3 have further deposed that the Lumberdari in question was hereditary. This means that Ganesh being already alive the office of Lumberdar could not possibly have devolved permanently on the Petitioner. Besides all this, Shri Hashmatulla (P.W. 3), who is the Tehsildar of Kapasan, has most emphatically affirmed that the Petitioner does not in his capacity as a Shikmi Lumberdar get any remuneration or compensation. Even Respondent No. 1's own witnesses, namely, Gopal Rao (D.W. 4), and Tehsildar Darshan Singhji (D.W. 5) have admitted that a Shikmi Lumberdar is a temporary, acting or officiating Lumberdar. In view of all this evidence, the conclusion is clear that, although, at the time of his nomination, the Petitioner held a temporary, acting or officiating office, as a Shikmi Lumberdar, he did not receive any remuneration or compensation and did not, therefore, hold any office of profit, as contemplated by Art. 191 of Constitution of India, and so, his Nomination Paper was improperly rejected by the Returning Officer. This portion of the issue is accordingly decided in favour of the Petitioner.

Issue 1(b).—In the light of our above decision on issue 1(a), it cannot be denied that there is a very strong presumption in favour of the Petitioner that on account of the improper rejection of his Nomination Paper, the election has really been materially affected. This presumption is undoubtedly rebuttable, but, there is absolutely no evidence on behalf of the contesting Respondent to rebut the presumption. On the other hand, even Respondent's own witness, Sheo Raj Singhji (D.W. 7) could not help admitting that the Petitioner possessed good influence in the villages of Kapasan Tehsil. There is, therefore, no reason to hold that the election has not been materially affected.

Issue 2.—The learned counsel for the Petitioner having, at the time of argument very frankly given up his objections under paras. 2, 4, 6 to 11 and 13 of Schedule A of the Petition, these objections are left unconsidered. He has, however, pressed paras. 3, 5 and 12, and so, we proceed to discuss these paras. serially and separately.

In para. 3 of Schedule A, the allegation made against Respondent No. 1 is that his agent "with his knowledge employed the Putari of Marmi 'Mataji' to show to the people that he was possessed with the spirit of Goddess and ask people to vote for 'Deepak' which was the symbol of the opposite party No. 1 and then

only the religion will be protected. The same thing was done by the Pujari in a large gathering and people were made to believe that really Goddess was speaking through the Pujari."

The Respondent has denied the above allegations with the result that the onus falls on the petitioner to prove them. We hold that this onus has not been discharged. The Petitioner has relied on the testimony of his two witnesses namely, Nahar Singh (P.W. 7) and Khema (P.W. 10). The evidence of the first witness is that there was a meeting at the temple of Marmi Mataji, at which meeting Respondent No. 1 and Thakurs Takhat Singh and Seoraj Singh were present. The Bhopa (Pujari) was asked by Respondent Jagat Singh and Thakur Takhat Singh as also by Thakur Sheoraj Singh that he should show it off to the audience that he had been possessed by a spirit and should then advise them to cast their votes in favour of the 'Deepak'. The Pujari replied that he was not prepared to declare that he was obsessed but would certainly ask the audience to vote for the 'Deepak'. After this, on behalf of Respondent Jagat Singh a letter addressed to different villages was drafted and in that letter it was stated that the Mataji had ordained that votes be given to the 'Deepak'. Then copies of that letter were sent out to different villages. Lalu Ahir of Jalampura had written out the original and copies were made out by him as also by some others. The second witness has simply stated that Respondent Jagat Singhji and the jagirdars of Manias and Pouna were present at the meeting. The Bhopa of the temple announced that votes be given to the 'Dia wali Peti' according to the wishes of the Mataji (Goddess of temple). The witness was given a written piece of paper by Thakur Sahib of Pouna, who instructed him to deliver it to the Patel of Raghunathpura, and he did comply with his instructions.

It is worthy of note that in para. 3 even the name of Respondent No. 1's agent, who is supposed to be guilty of the alleged illegal practice has not been given and Kela the Pujari in question and Lalu the scribe of Ex. V have not been produced. There is also no material on the record to show that Ex. V is not a manufactured but a genuine document. Further, the Respondent No. 1 has examined Thakurs Takhat Singh (D.W. 6) and Sheoraj Singh (D.W. 7) on oath. The former has denied that he has worked as Respondent No. 1's agent or delivered any lecture at Marmi Mataji and the latter has stated that he never went or goes to Marmi Mataji and never acted as the agent or worker for Respondent No. 1. Thus, it cannot but be held that the petitioner has failed to substantiate his allegations as made in para. 3 of Schedule A.

The Petitioner's allegations under para. 5 of Schedule A may be reproduced as follows in his own words:—

"Opposite party No. 1, his agents and canvassors who were mostly Jagirdars specially Jagirdars of Pahuna, Manyas, Bansi, Beheda, Sadri and others, terrorised voters and asked them to vote for opposite party No. 1 otherwise dacoities will be committed and they will be killed. Reign of terror prevailed in the area and the police was not able to maintain order on the polling station."

Respondent No. 1 pleads that the contents of the above paragraph are highly scandalous, vexatious and ill conceived. According to him, "the Congress Party who has set up the petitioner to file the petition and the petition is thus champertous, has been carrying on a vendetta against the Rajput community in general and Jagirdars in particular and having miserably failed in its attempt to create class warfare has bolstered up this petition and made these allegations in paragraph 5 which allegations are entirely false, mean and malicious and are the result of a diseased brain. Reign of terror, if any, was showered by the Congress Party on the supporters and workers, of this Respondent and more particularly at Badi Sadri where the Tehsil Congress Secretary and members of the Tehsil Congress Committee headed by one Jaichand Regar forcibly dispersed the election Meeting held by his Respondent and pelted his workers with shoes and stones and also committed acts of dacoity under the garb of general hooliganism and looted several workers of the Respondent and more particularly Nandlal, Gheesalal and Sitaram."

In order to prove his allegations the Petitioner has examined Ram Lal (P.W. 5) and Bhawani Ram (P.W. 6). Both of these witnesses have referred to an election meeting which is said to have taken place in village Rewara one day before the election. At that meeting, according to Shri Ram Lal (P.W. 5), Thakur Sheoraj Singh (D.W. 7) told the audience that the symbol 'Deepak' (lamp) represented Eklingji Mahadeo and so votes be cast in the ballot-box bearing that symbol. He further said that if votes be cast in the Congress ballot-box, the

Hindu Religion will stand destroyed. The people were also told that if 'Deepak' would not be voted for, thefts and dacoities would revive, and according to P.W. 6, Thakur Sheoraj Singh advised that votes be cast in the ballot-box which had 'Deepak' as a symbol of Eklingji. He also said that if the votes were given to the Congress the temples will get contaminated, in so far as, even the Harijans will be allowed admission thereto. He further stated that if votes were not given to the 'Deepak', thefts and dacoities would recur. Lastly, he said that he and other Sardars would commit dacoities in case the votes were cast for the Congress.

Respondent No. 1 has taken pains to get the above statements refuted by Thakur Sheoraj Singh himself even though a non-bailable warrant had to be issued against the witness. The latter has stated on oath that he never visited Rewara during the election days and acted as an agent or worker for Respondent No. 1. The latter witness is a Jagirdar, and we think he is more reliable than Petitioner witnesses P.Ws. 5 and 6. We accordingly hold that the allegations in para. 5 of the Schedule have not been made out by the Petitioner.

In para. 12 of Schedule A, the petitioner alleges that Respondent No. 1 "procured the assistance of Tehsildar of Bari Sadri for furtherance of his election. The said Tehsildar openly canvassed in favour of opposite party No. 1 on polling days bottles of wine were brought from Jilwar Thakur which were caught."

Respondent No. 1 has pleaded that all the above allegations are false.

The petitioner has examined two witnesses, namely, Madhav Lal (P.W. 8) and Krishna (P.W. 9). The first professes to be a businessman and the second is a mere cultivator. The evidence of these witnesses is that at the Mahal (palace) at Bari Sadri a meeting attended by about 100 people took place and the then Tehsildar told the people that they should vote for the Deepak Peti and after the meeting was over tea and strong drinks were served. The Tehsildar in question was admittedly Darshan Singhji and the Respondent has produced him. He says that during the election period he never attended any meeting at the Mahal nor asked any people to vote for the Deepak Peti. We accept the Tehsildar's statement as more correct and hold that the Petitioner's allegation as made in para. 12 of Schedule A have remained unestablished.

The result of our finding is that the first portion of the issue has not been proved, and so, the second portion of it does not arise.

Issue 3.—The petitioner's allegations in paras. 1 and 4 of Schedule A read as follows:—

Para. 1.—"The opposite party No. 1, his agents and canvassors with his connivance employed the village headmen of almost of all villages to canvass and make propaganda in his favour and they were paid money and given drinks everyday."

Para. 4.—"The opposite party No. 1 employed more people than authorised for propaganda and canvassing and paid remuneration to them."

A mere casual reading of the above two paragraphs indicates that the particulars of corrupt practices as given above, are too vague and wide and do not comply with the provisions of section 83 of the Representation of People Act of 1951. It has, however, now become quite unnecessary to ask the Petitioner to supply better particulars, because, his counsel has, in the course of his arguments, made it clear that he does not wish to press the allegations in question. The first portion of the issue is accordingly decided in the affirmative, and the second one, in the negative.

Issue 4.—The scope of this issue is distinctly and undisputably much wider than the ground covered by Section 82 of the Representation of People Act, of 1951. It would, therefore, be improper to compress and consider the subject-matter of the issue within the range of the above section, which enjoins a petitioner to join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. The petitioner's argument is that, although, Jaichand Regar was a duly nominated candidate, he was not "a duly nominated candidate, at the election" that is, at the stage of polls, in so far as, he being the only Scheduled caste candidate nominated for the Reserved Seat was automatically declared elected to that seat under Section 54(2) of the Representation of People Act of 1951 and had not to go to the poll at all. The petitioner contends that only candidates actually contesting the election after due nomination are to be necessary parties.

The above contention seems to be sound enough, so far as, the provisions of Section 82 are concerned, but, it has no application to the wider controversy as raised by the issue to the effect as to whether the election petition is not maintainable owing to the non-joinder of Jaichand Regar, who was admittedly the successful candidate from the Reserved seat of Bari Sadri, Kapasan Constituency.

The question whether non-joinder of a candidate as respondent to an election petition is fatal or not, will depend on the answer to a further question whether the Tribunal can or cannot grant the relief sought behind the back of such a candidate, without causing any detriment to his interests. Applying this test to the present case, we find that the petitioner's omission to implead Jaichand Regar is certainly fatal, because, the relief as claimed by the petitioner that the election be declared to be wholly void, cannot be given without affecting Jaichand's rights and interests.

Nor, is it possible to accede to the oral prayer of the petitioner's learned counsel that Jaichand Regar may be left undisturbed and election to the General Seat alone be set aside. This prayer is highly untenable, because, under the law, as it stands, there is no option for an Election Tribunal but to hold the election of both the successful candidates in a double-member constituency to be void, although, the objection may relate to only one of them. The reason for this is obvious. The election being one and indivisible, the returns for the two seats cannot be regarded as two separate elections. The following nine cases are in point:—

1. Election Petition No. 25 of 1952. (Gazette of India Extraordinary, dated 5th February 1953, at page 285).
2. Election Petition No. 104 of 1952, Niranjansingh versus Brijbhan Singh before the Election Tribunal, Patiala.
3. Election Petition No. 3 of 1952, Surajbhan versus Hemchand before the Election Tribunal, Delhi. (Gazette of India Extraordinary, dated 19th November 1952, at page 2443).
4. Election Petition No. 33 of 1952, C. K. Ramchandram Nair versus Ram Chandradas before the Election Tribunal, Quilon.
5. Election Petition No. 1 of 1952, Bijoy Mohan Reddi versus Pagga Pulla Reddi, before the Election Tribunal, Secundrabad.
6. Election Petition No. 19 of 1952, Nagu Bhai versus Mithabhai before the Election Tribunal Baroda (Bombay). (Gazette of India Extraordinary at page 1893, dated 11th August 1952).
7. Election Petition No. 4 of 1952 (Jabalpore). (Gazette of India Extraordinary, dated 24th February 1953, at page 609).
8. Election Petition No. 272 of 1952 (Faizabad). (Gazette of India Extraordinary, dated 21st April 1953, at page 1408).
9. Election Petition No. 221 of 1952 (Gwalior). (Gazette of India Extraordinary, dated 5th May 1953, pp. 1557 and 1558).

It may be noted that the reasoning adopted in every case was the same, *viz.*, that the Election to the two seats—one for the General and the other for the Reserved, was one indivisible Election and, therefore, the improper rejection of a nomination paper relating to either of these two seats affects the entire election. In case No. 8, it was further held, that the whole election relating to the General and Reserved seats having been materially affected by the improper acceptance of the nomination paper of a Respondent, the entire election relating to both the seats must be declared to be wholly void.

The position as it has developed in the case is that, although, Jaichand Regar was a necessary party to the present litigation and the respondent No. 1 had been pressing for it since 22nd of December, 1952, the petitioner has taken no pains to bring him on the record until he (petitioner) had concluded his arguments on 8th June, 1954. This being the case, we cannot but hold that non-joinder of Jaichand Regar is fatal to the petition. The issue is decided accordingly.

Issue No. 5.—In view of our decision on issue 4, the petition fails and the petitioner is entitled to no relief.

ORDERED

Let the election petition be dismissed. The petitioner shall pay Rs. 500/- as costs to the contesting respondent No. 1.

This order shall be deemed to be passed *ex parte* in favour of the above respondent who absented himself on the date of arguments.

KOTAH;

The 14th June, 1954.

(Sd.) P. D. PANDE,

(Sd.) J. P. MATHUR,

(Sd.) BISHAN S. DARBARI,

Election Tribunal, Kotah Junction.

[No. 19/313/52-Elec.III/11933.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.